

IN RE: PETITION FOR SPECIAL HEARING	*	BEFORE THE
AND VARIANCE		
E side of York Road, 20 feet	*	OFFICE OF ADMINISTRATIVE
N of the c/l of Gerard Avenue		
8 th Election District	*	HEARINGS FOR
3 rd Council District		
(2119 York Road)	*	BALTIMORE COUNTY
Dining Out LLC and	*	
General Associates, LLC		
<i>Petitioner</i>	*	CASE NO. 2012-0143-SPHA
* * * * *		

ORDER AND OPINION

This matter comes before the Administrative Law Judge as Petition for Special Hearing filed by the legal owner of the property, Michael Dellis, authorized representative of Dining Out, LLC and General Associates, LLC. The Petitioner is requesting Special Hearing relief pursuant to Section 500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R.”) for an amendment to the previously approved site plan in Case No. 99-482-SPH to reflect the existing and proposed improvements/conditions as shown on the instant plan to accompany this petition.

Petitioner is also seeking Variance relief as follows:

- From Section 235.1 of the Baltimore County Zoning Regulations (“B.C.Z.R.”) to permit a setback of 0 feet from the front property line in lieu of the minimum required setback of 15 feet from the front property line; and
- From Section 235.2 and 232.2.B of the “B.C.Z.R.” to permit a 0 foot side yard setback on the street side of a corner lot in lieu of the required 10 feet.

The subject property and requested relief is more fully depicted on the site plan that was marked and accepted into evidence as Petitioners’ Exhibit 1.

Appearing at the requisite public hearing held for this case was Steve Dellis, authorized representative of Dining Out LLC and General Associates, LLC, James Wilson, Virginia Navid, Bernadette Moskunas of Site Rite Surveying, Inc., the professional land surveyor who prepared the site plan, and Lawrence E. Schmidt, Esquire, attorney for the Petitioner. The file reveals that the Petition was properly advertised and the site was properly posted as required by the Baltimore County Zoning Regulations. Eric Rockel, a resident of the nearby community, was also present.

The Zoning Advisory Committee (ZAC) comments were received and made a part of the file. A comment was received from the Bureau of Development Plans Review dated December 19, 2011, which states:

The improvements proposed along Gerard Avenue should be set back at least 5 feet from the existing curb face and the Petitioner should be required to provide a sidewalk for pedestrians to travel from the existing sidewalk on the north side of Gerard Avenue to the one on York Road at the intersection.”

There were no other comments received from any of the County reviewing agencies.

Petitioner’s information was proffered by Mr. Schmidt. The subject site is located in Timonium, across from the Maryland State Fairgrounds and does business as “Michael’s Café.” The property is located at the corner of York Road and Gerard Avenue, is approximately 1.44 acres in size, and is zoned BM in the front of the property and RO to its rear. Michael’s Café has done business on the BM portion of the site for more than 20 years. A mixed use service station is adjacent to the northern boundary of the site on York Road. In 1969, a special exception was granted for an office building in the rear RO portion of the site, which is known as the Gerard Building. At that time there remained a bar and an auto glass business on the front BM portion of the property. In 1986, permission was obtained to raze the auto glass business and construct a restaurant on the front portion of the lot. A parking variance was also granted, allowing 35 fewer spaces than required by the regulations. In 1995, a modified parking plan was approved for the

restaurant and additional parking for the restaurant was permitted in the RO (rear) portion of the lot. In 1999, a modification of the existing site plan was approved, permitting the restaurant to have an outdoor seating area.

Petitioner now requests that the existing site plan be amended and setback variances granted, to permit a total of approximately 2,600 square feet of additional and outdoor seating, both on the York Road as well as Gerard Avenue sides of the restaurant. There is presently an outdoor seating area of some 890 square feet on York Road, which Petitioner seeks to enlarge and enclose while establishing a new seating area and partially covered bar on the Gerard Avenue side. Petitioner intends to enclose the additional seating on the York Road side with brick and glass, connecting it to the roof covering. They also intend to plant buffers on the York Road side to further insulate the additional seating from noise generated by the traffic on York Road. Petitioner entered into the record a number of photographs so as to provide a “picture” of the subject site and its surrounding area, showing among other items, the present restaurant and existing outdoor seating, the Gerard Building, existing parking between Michael’s Café and the Gerard Building, and the Kelly Building, located directly behind the Gerard Building on an adjacent lot. He noted that the parking to the rear of Michael’s as well as that provided by the Gerard and Kelly Buildings are, in fact, physically interwoven.

Counsel then addressed the parking requirements for the additional seating being requested. He reiterated the 35 space reduction (which Petitioner wishes to retain) as well as the modified parking plan of 1995. As a result of Petitioner’s newly requested construction, Counsel calculates the parking requirements as follows: 48 spaces, based on the square footage of the Gerard Building; 127 spaces for the existing Michael’s restaurant; in an effort to “clean up” all prior plans, Petitioner is including 3 spaces for the existing two story building on the subject site which is used for

Michael's corporate offices only, but has not previously been included in the parking calculations; and 43 spaces based upon the square footage of the proposed outdoor seating. The total "gross" parking is therefore 221 spaces.

Petitioner suggests that under Section 409.6 of the B.C.Z.R., if two uses exist on the same site, the "shared calculations table" would apply. In this situation, the Gerard Building is utilized during the day, but not at night; the reverse is true for the subject restaurant. Accordingly, the "shared table" applicable here is presented on the plan the accompany the instant Petition (Petitioner's Exhibit 1). The largest number under the table being utilized results in a "shared" parking requirement of 178 spaces. The previously granted variance reduction of 35 spaces reduces the number to 143 spaces as the actual parking requirement. In the 1990 plan, 109 spaces were allotted to the combined Michael's Gerard Building lot. Petitioner has more efficiently reorganized and remarked the lot to include 121 spaces, all of which, including driver aisles, complying with applicable size regulations. In addition, Petitioner presented a letter from the owner of the Kelly Building located behind the Gerard Building. They have entered into an arrangement with the owner of this building to utilize its parking spaces Friday and Saturday nights for use by Michael's patrons; vehicles to be parked under a new valet arrangement. A letter from Keith Rice on behalf of the building owners (Kelly Building LLC) to that effect was submitted as Petitioner's Exhibit 7. It was also noted that whereas prior to the 1995 case there was parking permitted on the south side of Gerard Avenue, but not on the north side; the opposite is true today. Finally, Petitioner noted that there is angle parking between the gas station just to the north of the restaurant site as well as marked parking spaces between the subject restaurant and the Timonium Shopping Center which shares its northern border. These spaces are utilized by both entities. The Petitioner has used these spaces for their patrons uninterruptedly for more than 20 years. Mr. Dellis confirmed that the "in

common parking spaces” have been openly used by the restaurant for those many years and are, in fact, maintained by the Petitioner.

Virginia Navid, the architectural designer of the proposed expansion, explained that the bar and additional seating to be located on the Gerard Avenue side of the restaurant, would only have a roof extending over the server bar and its patrons; the seating itself would be open. Machinery presently located there would be moved. On the York Road side, the proposed addition to the outdoor seating would be enclosed with a brick and glass wall, roof and landscaping buffer between it and York Road.

Finally, as to the Petitioner’s special hearing request, Counsel offered that, given the commercial nature of the site and its surroundings, conformance with Section 502.1 of the B.C.Z.R. was not addressed. However, Counsel did note that, pursuant to the comment of the Bureau of Development Plans Review, a sidewalk for pedestrians to travel from the existing sidewalk on the north side of Gerard Avenue to the existing sidewalk on York Road would be constructed by Petitioner with an appropriate curb cut out for ingress and egress to the restaurant’s parking area.

As to the requested variances, Counsel proffered that in granting previous variances as to this property, the then Zoning Commissioners as well as the County Board of Appeals, had found the property necessarily to be unique. Nevertheless, Petitioner offered that the combination of the shape and physical layout of the site, including the multiple buildings and shared relationships thereupon, as well as the constraints imposed upon the site by the plethora of surrounding commercial uses, supported a finding of uniqueness. The use of the site remains the same as it has over the years, and its continued use for its permitted purpose would face practical difficulty if the requested variances were not granted.

Mr. Rockel testified that he is concerned about the parking situation surrounding the subject site. Although he has no particular objection to the proposed new seating and common use parking arrangements arising therefrom, he believes that the off-site parking should be confirmed by more formal documents; and that the Rice letter is not, in his mind, sufficient to ensure the continued use of the Kelly Building parking spaces. He suggests as an alternative, utilizing the property on York Road and Gerard Avenue adjacent to the subject site to the south for parking. He notes that it is vacant and that Mr. Dellis is a member of its ownership LLC. Finally, he believes that Section 409.7.c should be utilized in this matter and formal documents executed.

In rebuttal, Mr. Dellis offered that he is looking for a long term tenant to the property referred to by Mr. Rockel. He stated that he plans no kitchen expansion for the restaurant, nor does he anticipate further improvements to increase the restaurant's capacity. He firmly believes that to continue to be competitive, the availability of outside seating is essential. Moreover, he stated that as far as Section 409.7.c was concerned, he is not requesting a building permit to construct an off-site facility; and that arrangements such as that set out by the letter from Mr. Rice represents the business practice for such matters as it exists today.

Based upon the evidence and testimony presented, I believe that Petitioner has met his burden as to the appropriateness of his sought for improvements, and the modification and confirmation of amending the previous site plan, as well as approving the necessary parking to support the site's present use and its proposed expansion. I also agree with Counsel that as far as the special hearing is concerned a recitation of responses to Section 502.1 of the B.C.Z.R. is unnecessary. Petitioner's requests are reasonable and clearly within the spirit and intent of the zoning regulations and in harmony with the already permitted use of the site. The proposed parking plan, though multi-faceted, was detailed, clearly appropriate, and in conformance with all applicable

County regulations.

Moreover, I find that special circumstances and conditions exist that are unique to the subject property; and that, due to these unique conditions, strict enforcement of the B.C.Z.R. would cause the Petitioner to suffer a practical difficulty. Finally, I find that the relief requested will not result in any adverse impact on the surrounding area; rather, the proposed improvement will be a positive addition to the subject property and the surrounding locale.

Finally, I find that the variances requested meet the requirements of Section 307 of the B.C.Z.R., as established in *Cromwell v. Ward*, 102 Md. App. 691 (1995).

Pursuant to the advertisement, posting of the property and public hearing held, and after considering the testimony and evidence offered, I find that Petitioner's request for special hearing and variances should be granted.

THEREFORE, IT IS ORDERED, this 7 day of February, 2012 by the Administrative Law Judge for Baltimore County, that the Petition for Special Hearing seeking relief from Section 500.7 of the Baltimore County Zoning Regulations ("B.C.Z.R.") for an amendment to the previously approved site plan in Case No. 99-482-SPH to reflect the existing and proposed improvements/conditions as shown on the instant plan to accompany this Petition, be and is hereby GRANTED.

IT IS FURTHER ORDERED that the Petition for Variance as follows:

- From Section 235.1 of the Baltimore County Zoning Regulations ("B.C.Z.R.") to permit a setback of 0 feet from the front property line in lieu of the minimum required setback of 15 feet from the front property line; and

- From Section 235.2 and 232.2.B of the “B.C.Z.R.” to permit a 0 foot side yard setback on the street side of a corner lot in lieu of the required 10 feet,

be and are hereby GRANTED.

The relief granted herein shall be subject to the following:

1. The Petitioner may apply for their building permit and may be granted same upon receipt of this Order, however the Petitioners are hereby made aware that proceeding at this time is at their own risk until such time as the thirty (30) day appellate process from this Order has expired. If for whatever reason, this Order is reversed, the Petitioners will be required to return and be responsible for returning said property to its original condition.
2. Compliance with the ZAC comments made by the Bureau of Development Plans Review dated December 19, 2011, a copy of which is attached hereto and made a part hereof.

Any appeal of this decision must be made within thirty (30) days of the date of this Order.

Signed
LAWRENCE M. STAHL
Managing Administrative Law Judge for
Baltimore County

LMS:pz